IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 895 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KISHOR KABABHAI PATEL

Versus

LEGAL HEIRS OF RAMJI THAKARSINH

Appearance:

MR MITUL TRIVEDI for MR PP PUROHIT for Petitioner No. 1

MS MANISHA NARSANGANI for MR PC KAVINA for Respondents No. 1/1 to 1/7

MR UDAI BHATT AGP for Respondents No. 2-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 16/06/2004

ORAL JUDGEMENT

1. Heard learned Advocate Mr.Mitul Trivedi for

learned Advocate Mr.P.P.Purohit for the petitioner, learned Advocate Ms.Manisha Narsangani for learned Advocate P.C.Kavina for respondents No.1/1 to 1/7 and learned AGP Mr. Udai Bhatt for respondents No. 1 and 2.

2. This Revision Application is filed against an order passed by learned Second Extra Assistant Judge, Rajkot, rejecting Civil Misc. Application No.45 of 1998, filed by the present petitioner for condoning delay of 54 days in filing Misc. Civil Appeal in the said Court. Present petitioner filed Civil Suit No. 1825 of 1996 in the Court of Civil Judge (SD) at Rajkot, wherein an Application for interim injunction came to be filed by the plaintiff, which was rejected by learned Civil Judge (SD), Rajkot, by his order dated 27.1.1998. Within 30 days Misc. Civil Appeal was required to be preferred before the District Court, Rajkot, instead with delay of 54 days, present petitioner - original plaintiff preferred Appeal with Application i.e. Civil Misc. Application No.45/1998 for condonation of delay of 54 days in filing Misc. Civil Appeal against the above said order of learned Civil Judge (SD), Rajkot.

3. On going through the record, it appears that the learned Second Extra Assistant Judge, Rajkot, rejected the application for condonation of delay of the petitioner on the ground that the petitioner pleaded ignorance of law, which cannot be a ground to condone the delay and secondly since the petitioner had engaged advocate in the said Civil Suit, he was supposed to know the result of interim application decided by Civil Judge (SD), Rajkot and, therefore, petitioner did not come to the court with clean hands and bona fide intention.

4. Learned Advocate for the petitioner relying on a decision of the Supreme Court in the matter of Kishanganj Municipality vs. Agrl. Produce Market Committee, as reported in AIR 1999 SC 1570, contended that in the application five reasons were given, which were bona fide and the learned Second Extra Assistant Judge ought to have condoned the delay in the circumstances and on the grounds mentioned in the Civil Misc. Application No. 45 of 1998.

5. On the other hand, learned Advocate for the Respondents No. 1/1 to 1/7 Ms. Manisha Narsangani urged that this Revision Application was not maintainable because with the new Amendment in Section 115 of the Civil Procedure Code, the scope of Revision has now become narrow to the extent that even failure of justice cannot be taken care of in revisional jurisdiction. It

was argued that learned Second Extra Assistant Judge rightly rejected the application of the petitioner on the ground that the petitioner did not approach the court with clean hands. Learned AGP Mr. Udai Bhatt was heard.

6. Having regard to the facts and circumstances of the case and having regard to the counter contentions raised by learned advocates, it appears that the learned Second Extra Assistant Judge has committed a manifest error and irregularity in coming to the conclusion to reject the application filed by the petitioner. True it is that with the Amendment made under Section 115 of the Code of Civil Procedure, the scope of the revision has now become narrow, but still when the court has exercised jurisdiction not vested in it by law or failed to have exercised a jurisdiction so vested or to have acted in the exercise of its jurisdiction illegally or with material irregularity, this Court may revise the order impugned in this Revision Application. The law as to the condonation of delay is clearly established to the extent that the sufficient cause appearing in Section-5 of the Limitation Act must be construed liberally. This is so because no party is to gain anything by filing proceeding like the present one late and unless it clearly appears from the record that the delay was manoeuvred, mala fide and intentional, grounds advanced for condonation of delay be liberally construed. True it is that, the petitioner had engaged an advocate to conduct the said civil suit, but the petitioner has sufficiently made it clear in the grounds that right from 20.1.1998 to 6.2.1998 for marriage occasions of relatives, he was out of station and, therefore, he received information late, and that was the bona fide error. There is no reason to disbelieve this statement of the petitioner. There is no occasion on facts of the case to come to conclusion that since the petitioner had engaged advocate to conduct the civil suit, he was presumed to know the result of the proceedings and therefore the petitioner did not approach the court with clean hands.

7. In view of the above discussion and in view of settled law, it clearly appears that the petitioner has made out grounds for condonation of delay and could show sufficient cause for filing the Misc. Civil appeal late by 54 days. However, the learned Second Extra Assistant Judge committed material irregularity in considering the settled law and the facts of the case. The order therefore is required to be revised.

7. In the result, this Revision Application is allowed. The impugned order passed by learned Second

Extra Assistant Judge, Rajkot, below Civil Misc. Application No. 45 of 1998 on 30.6.2001 is set aside. Civil Misc. Application No.45 of 1998 filed by the petitioner for condonation of delay of 54 days is allowed and the delay is condoned. Learned District Judge, Rajkot, is directed to take further necessary steps to deal with the aforesaid Misc. Civil Appeal according to law. Rule made absolute to the above extent.

(J.R.Vora, J.)

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